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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Shasta)

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In re T.S. et al., Persons Coming Under the Juvenile  
Court Law.

C088262

SHASTA COUNTY HEALTH AND HUMAN  
SERVICES AGENCY,

Plaintiff and Respondent,

v.

C.R. et al.,

Defendants and Appellants.

(Super. Ct. Nos.  
16JVSQ3064201,  
16JVSQ3064301,  
16JVSQ3064401)

C.R. (mother) and Tim S. (father), parents of the minors T.S., Ti.S., and E.S.,  
appeal from the juvenile court's order terminating their parental rights. (Welf. & Inst.  
Code, §§ 366.26, 395.)<sup>1</sup> Mother contends the juvenile court erred in finding the sibling

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<sup>1</sup> Undesignated statutory references are to the Welfare and Institutions Code.

relationship exception to adoption did not apply. Father joins in mother's contention. We shall affirm.

### BACKGROUND

In March 2016, mother was living with the minors J.R. (born December 2007), T.S. (born November 2009), Ti.S. (born August 2011), E.S. (born October 2012), her daughter O.C. (born June 2004), and father.<sup>2</sup> The Shasta County Health and Human Services Agency (the Agency) was informed that month by the Redding Police Department that, pursuant to an investigation of mother's residence for drug dealing, 100 (including 30 used) syringes, one gram of methamphetamine, an "8-ball" of heroin, cocaine, scales, and baggies were found at her home. Mother admitted to police that she used methamphetamine and smoked marijuana earlier that day, and showed track marks on her arms to the officers. The minors, J.R., and O.C. were placed in protective custody the following day. Father was incarcerated and the whereabouts of J.R.'s and O.C.'s fathers were unknown.

In April 2016, the Agency filed dependency petitions alleging jurisdiction over the minors, J.R., and O.C. based on mother's substance abuse problem, father's anger control and substance abuse problems, as well as his incarceration, the unavailability of the other fathers, and the parents' inability to meet their children's medical and dental needs. The children were detained later that month.

The May 2016 jurisdiction report related that mother admitted having a long history of drug abuse and had attended substance abuse treatment in the past. Father had a history of substance abuse and a criminal history of violent, drug-related, and child endangerment charges.

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<sup>2</sup> J.R. and O.C. are not parties to this appeal.

The June 2016 disposition report recommended continuing the minors as dependents while giving custody of O.C. to her father and terminating the dependency as to her. T.S. had no formal educational experience before being placed in foster care. She struggled with her foster placement, threatening to run away several times. Ti.S. spent a lot of time in his foster placement with E.S. E.S. had tantrums during most of his first day in placement, but subsequently did well.

A July 2016 addendum report related that J.R. reported being physically abused by his foster father earlier that month causing the children to be placed in new foster homes. The minors' behavioral problems lessened in their new placements.

In July 2017, the juvenile court terminated jurisdiction over O.C. and awarded custody to her father, sustained the petition as to the minors, and ordered reunification services for mother and father.

The six-month review report stated that mother participated in drug treatment for four months before relapsing. Father perpetrated domestic violence against her during the time she relapsed. Prior to the relapse, she was making good progress on her case plan.

J.R. and Ti.S. were placed together in a foster home, while T.S. and E.S. were each placed in separate foster homes. T.S.'s placement, her fourth, was not a good fit and a search for a more appropriate placement was underway. She struggled in her placement due to aggressive behaviors. J.R. and Ti.S. were in their third placement. E.S. was in his third placement; he attached to his caregivers quickly and settled into his new foster home. T.S. was diagnosed with posttraumatic stress disorder with depressive features. Ti.S. and E.S. had no diagnosed mental health needs.

A January 2017 report from the court appointed special advocate (CASA) related that T.S. visited her siblings twice a week with mother. The report stated that T.S. could benefit significantly from monthly sibling visits, with or without the parents' presence, as it may help keep the children in a healthy and more cohesive relationship.

T.S. looked up to her older brother and seemed to enjoy her younger brothers as well. The CASA report on Ti.S. and E.S. noted the children enjoyed getting together. Ti.S. and T.S. appeared to have a significant bond. Ti.S. mentioned O.C. several times and said he missed her since she reunited with her father. The children were rowdy when together, but intensely loyal to each other and quick to defend.

Services were continued at the six-month review hearing in January 2017.

The 12-month review report recommended continuing services for mother and terminating father's services. Father's criminal case was set for trial and he was facing multiple charges with a possible 20-year term.

J.R. and Ti.S. moved to their fourth placement after they were asked to leave their previous placement due to behavioral challenges. They appeared to be regressing both socially and emotionally. Ti.S. was now diagnosed with adjustment disorder and attention deficit disorder. T.S. was now in a group home after she engaged in numerous dangerous behaviors that put she and her foster family at risk. T.S. physically assaulted the foster parents, threatened to harm the foster siblings, and would lay down in traffic during times of conflict. She appeared to be doing well at the group home. E.S. had not changed his placement.

The minors had regular contact with each other as well as regular visitation with mother. J.R., T.S., and Ti.S. also saw each other at school. The children all enjoyed contact with their siblings. They were not currently placed together, but the Agency was assessing alternative placements that may be appropriate and could accommodate all of their needs.

The juvenile court terminated father's services and continued mother's services at the 12-month review hearing in June 2017.

An August 2017 CASA report stated T.S. adored and wanted to spend time with all of her brothers. She hugged her brothers and called out to them, "I love you." She

would dearly love to live with them again. T.S. also missed her older sister O.C. and would like to visit her.

The Agency recommended terminating services for mother in a September 2017 18-month review report.

Mother had been arrested twice for selling illegal substances since the last report. Mother was part of a group of six people involved in the sale of narcotics; she incriminated herself through texts. A total of 3343.63 grams of heroin with an estimated street value of \$330,000 were seized from the group. Multiple service providers and Agency personnel reported concerns about mother's sobriety during the reporting period. Mother, who had stopped testing positive for controlled substances in April 2017, began testing positive for them starting in June 2017. Throughout the life of the case she had stayed free of controlled substances for no more than three months at a time.

T.S. was doing well in the group home with decreased violent outbursts and incidents of being AWOL. Staff reported tremendous improvement in her behavior and self-esteem, which they attributed to the consistency of being in a group home placement. Ti.S. engaged in challenging behaviors following placement in his new foster home. E.S. continued in his third placement, where his behavior waxed and waned.

Ti.S. and E.S. both said they were mean to each other and J.R. was mean to them. Ti.S. would like to spend more time with all of his family members. T.S. expressed concern for her siblings and missed them.

Mother's services were terminated at the 18-month review hearing in September 2017.

A February 2018 CASA report on E.S. related he had sibling-only visits starting in January 2018. The minors enjoyed visiting with each other, particularly E.S. and Ti.S. E.S. often hugged each sibling as they said their goodbyes. E.S. and Ti.S. enjoyed spending separate time together. Ti.S. watches out for E.S. on the playground, and they

embrace each other when it is time to leave. The social worker recommended that E.S. and Ti.S. spend more time with each other.

A February 2018 CASA report on T.S. reiterated she adores and wants to spend time with her brothers. T.S. hugged her brothers and calls out to them, “I love you.” She would dearly love to live with her brothers again, and wished to be placed with them under a permanent plan of adoption.

The February 2018 section 366.26 report recommended continuing T.S., Ti.S., and E.S. in foster care with a permanent plan of adoption. The minors were not in adoptive homes. T.S. was improving and ready to transition to a lower level of care. She was in her sixth placement. Ti.S. was in his fifth placement and E.S. remained in his third. The Agency recommended a 180-day continuation to find an adoptive family for each of them.

In May 2018, mother filed petitions for modification (§ 388) requesting the juvenile court modify its order by returning the minors to her care with family maintenance. As changed circumstances, mother alleged her graduation from the Visions of the Cross program in March 2018, her transition to sober living housing, her completion of parenting classes in January 2018, and her continued visits with the minors.

The Agency filed a response to the petition in July 2018.

T.S. was now in a foster home and the caregiver expressed an interest in adopting her. Although some negative behaviors were expected of her as she transitioned from the group home, they were far less than expected. Her therapeutic team described her as being in a hypervigilant state, with the trauma she experienced as a child impacting her social and emotional development. Ti.S. loved his mother and wanted to be adopted. His challenging behavior decreased when visits with mother decreased and he was provided more information about the case. He expressed on multiple occasions his desire to be out of foster care and adopted.

E.S. was accustomed to living in the care of someone other than his mother. He frequently asked the social worker when he would be moving to an adoptive home. He talked about adoption in school and at therapy.

Following a contested hearing on the section 388 petition, the juvenile court denied the petition, found J.R. was adoptable and terminated parental rights as to him with a permanent plan of adoption, and continued the matter as to the minors.

The October 2018 section 366.26 report recommended terminating parental rights with a permanent plan of adoption. The minors were placed separately due to their divergent needs.

T.S. was placed in an out-of-county foster home in May 2018, her seventh placement. The proposed adoptive mother was committed to adopting her. She and T.S. were growing in their mutual emotional bond. Adoption was not mentioned to T.S. in light of her difficulty in controlling her emotions. Due to her history of multiple placements and reactive behaviors, there was a small likelihood of finding another adoptive home for her.

Ti.S. was placed with his proposed adoptive parents in October 2018 and made a good initial adjustment to the home. He has known the family, had extended visits over the last few months, and already formed an emotional bond with them. Other prospective adoptive homes were available if this placement did not succeed.

E.S. was placed with his proposed adoptive mother in August 2018 and made a good initial adjustment to her home. He was growing in his emotional bond and trust. Due to his history of emotional and behavioral reactivity, finding another adoptive placement would be difficult.

No witnesses or other evidence was presented at the section 366.26 hearing. Mother's counsel opposed terminating parental rights, arguing: "[T]hese children have been in and out of multiple homes and we would request the Court enter into a legal guardianship. The mother has been doing well as the testimony, I believe, indicated at

the last hearing so that is what we are requesting at this point.” Noting that the appeal from the denial of mother’s section 388 petition was pending, mother’s counsel requested the juvenile court to decline terminating parental rights.

Minors’ counsel remarked that the minors were “all gone in separate directions,” and mother made a lot of progress, but it was too little, too late, so it was “in the best interest of the children to go forward and find permanency for them.” Minors’ counsel also expressed hope that the adoptive parents keep the minors in touch with each other. Father’s counsel made no substantive argument.

The juvenile court remarked the minors’ placements were successful so far, and the proposed adoptive parents wanted to keep the children in contact. The court terminated parental rights with a permanent plan of adoption.

#### DISCUSSION

Mother and father contend the juvenile court erred in failing to find the sibling relationship exception to adoption applied.

“Under section 366.26, subdivision (c)(1)(B)(v), if the court finds the child will be adopted within a reasonable time, adoption must be ordered ‘ “unless the court finds a compelling reason for determining that termination [of parental rights] would be detrimental to the child” because “[t]here would be substantial interference with a child’s sibling relationship . . . .” ’ [Citation.] The purpose of this exception is to preserve long-standing sibling relationships that serve as ‘anchors for dependent children whose lives are in turmoil.’ [Citation.] The sibling relationship exception contains ‘strong language creating a heavy burden for the party opposing adoption.’ [Citation.] Factors for the court to consider include the nature and extent of the sibling relationship, whether the siblings were raised in the same home, whether they share a close bond[,], and whether continued contact is in the child’s best interests, as compared to the benefits of adoption. [Citation.] The court considers the best interests of the adoptive child, not the best interests of other siblings. [Citation.] We apply the substantial evidence standard of



review to the court’s factual findings regarding the applicability of the sibling relationship exception, ‘and the abuse of discretion standard to the court’s weighing of competing interests.’ ” (*In re Isaiah S.* (2016) 5 Cal.App.5th 428, 437-438.)

In considering the sibling relationship exception, the juvenile court first determines whether terminating parental rights would create substantial interference with the sibling relationship. If the court so determines, it must then weigh the child’s best interest in continuing the relationship against the benefits of adoption. (*In re D.O.* (2016) 247 Cal.App.4th 166, 173-174.) In other words, because adoption is the choice preferred by the Legislature if the child is adoptable (a point not disputed here), a finding of substantial interference with the sibling relationship does not compel the court to reject adoption. (*In re C.B.* (2010) 190 Cal.App.4th 102, 129.)

Neither parent objected to adoption on this basis. Father made no substantive arguments at the section 366.26 hearing, while mother raised a general objection to adoption while noting the minors’ numerous placements, mother’s progress, and the pendency of her appeal from the denial of the section 388 petition.<sup>3</sup> We reject mother’s claim that this, or the statement from minors’ counsel regarding the desirability of maintaining contact between the siblings, raised this claim. Minors’ counsel explicitly stated adoption was in the minors’ best interests; counsel’s statements expressing a wish for continued contact amongst the minors cannot be construed as either raising or supporting an exception to adoption. Failure to raise this objection to adoption forfeits the contention on appeal. (*In re Erik P.* (2002) 104 Cal.App.4th 395, 402-403.) Mother’s claim that the juvenile court erroneously relied on the willingness of the proposed adoptive parents to keep the minors in contact with each other is likewise forfeited.

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<sup>3</sup> We affirmed the denial of mother’s section 388 petition while the appeal in this case was pending. (See *In re J.R.* (March 15, 2019, C087872) [nonpub. opn.] )

Even if we were to consider the contention, it would not stand. While evidence in the record shows the minors' love for each other and desire to remain in contact, there is no evidence that separate placement is so harmful or so deprives them of benefit that the preference for adoption is overridden. The minors' various and considerable difficulties were related to the chaos and trauma associated with their home life before the dependency. They made progress during the dependency and continued to do so when they were separated. Notwithstanding their separation, all three minors were doing well in their respective adoptive placements. The record does not support the sibling relationship exception to adoption.

#### DISPOSITION

The judgment (order) is affirmed.

/s/  
BLEASE, Acting P. J.

We concur:

/s/  
ROBIE, J.

/s/  
DUARTE, J.